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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PENDLETON DIVISION

DONALD-ERNEST ALLEE,

Plaintiff,

v.

Civil No. ¹⁰~~09~~-655-SU

ORDER

OREGON DEPARTMENT OF
CORRECTIONS, et al.,

Defendants.

AIKEN, District Judge.

Plaintiff's has filed a "Motion for Immediate Recusal of Assigned Judge" (#5).

For the reasons stated below, plaintiff has failed to establish any sufficient reason to justify the recusal of Magistrate Judge Sullivan.

Two federal statutes govern recusal, 28 U.S.C. § 144 and 28 U.S.C. § 455. The standard for recusal under either section is the same: "Whether a reasonable person with knowledge of all the facts would conclude that the judge's

partiality might be questioned." Taylor v. Regents of the University of California, 993 F.2d 710, 712 (9th Cir. 1993).

To warrant recusal, judicial bias must stem from an extrajudicial source. Id. "A judge's prior adverse ruling is not a sufficient cause for recusal. Id., citing United States v. Studly, 783 F.2d 934, 939 (9th Cir. 1986).

Plaintiff apparently believes that Magistrate Judge Sullivan is the same Judge Patricia Sullivan that presided over a state court proceeding involving plaintiff. Plaintiff is advised that Magistrate Judge Sullivan is not the same person as Malheur County Circuit Court Judge Patricia Sullivan.

Plaintiff has not identified any real or apparent bias stemming from an extrajudicial source that would lead a reasonable person with all of the facts to question Magistrate Judge Sullivan's partiality. Accordingly, plaintiff's motion (#5) is denied.

Plaintiff has filed a "Motion for immediate temporary injunctive relief" (#6). However, at this point plaintiff does not have a legally sufficient complaint before the court. Therefore he has failed to establish at an "irreducible minimum," that he has a fair chance of success on the merits. Stanley v. University of Southern California, 13 F.3d 1313, 1319 (9th Cir. 1994), quoting Martin v. International Olympic Committee, 740 F.2d 670, 674-675 (9th Cir. 1994); Committee of Cent. American Refugees v. I.N.S., 795 F.2d 1434, 1437 (9th

Cir. 1986); Lancor v. Lebanon Housing Authority, 760 F.2d 361, 362 (1st Cir. 1985). Accordingly, plaintiff's Motion for preliminary injunctive relief (#6) is denied.

IT IS SO ORDERED.

DATED this 30 day of July, 2010.



Ann Aiken
United States District Judge